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RIO ALGOM MINES LIMITED

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September 9, 1966.

The Honourable Mr. Justice George A. McGillivray,
Commissioner,
The Royal Commission on
The Workmen's Compensation Act,
Second Floor,
67 Richmond Street West,
Toronto 1, Ontario.

Dear Sir:

The opportunity to present a submission to you is appreciated.

Firstly, we strongly support the submission made to you on August 16, 1966
by the Ontario Mining Association.

Secondly, we pinpoint herein three problem areas regarding provisions in
the Workmen's Compensation Act, namely:

1. Interpretation of an accident
2. Reporting of an accident
3. Waiting period

Interpretation of an Accident - Section 1. - (1)

The addition of Clause (iii) to Section 1 (1) which reads

"In this Act 'accident' includes, disablement arising out of and in
the course of employment"

has, according to our experience, encouraged some workmen to expect compensation
for disabilities which are not primarily caused, but merely become apparent,
at work. This applies when the disability is associated with a physical
exertion similar to activities commonly occurring off the job. Furthermore,
this misconception has been more firmly established by certain adjudications
made since the clause was introduced. A specific example will serve to
illustrate the point.

A carpenter while carrying tools up a stairway, in June 1964, experienced a pain in his chest which was later diagnosed as a heart condition. It was considered a non-occupational disability by the attending physician. Sickness insurance benefits from a contributory plan were applied for and paid at \$50 per week up to a total of \$1057 over a period of 5 months eventhough the mine closed its regular operations at the end of August. In the meantime a claim was filed for compensation. The Board's decision, following consideration by the Review Committee, is quoted below. ~~CONFIDENTIAL~~ (4)

"Following a complete investigation in connection with your claim, a complete review was made at high level and your claim has been allowed for the acute episode of your disability and this completes your entitlement under the Act"

Compensation payments were made accordingly to the latter part of November 1964 and amounted to \$1431. Insurance benefits were not refunded. Therefore the claimant received a total of almost \$2500 over a period of 5 months. In August 1965, some months after the announcement of the Board's new Appeal Structure, the claimant's union appealed for an extension of benefits and a hearing before the Appeal Tribunal was held in October 1965.

The union representative claimed that the workman's heart condition was caused on the job and that there was no pre-existing condition; this was supported by a statement signed by the attending physician as follows: ~~CONFIDENTIAL~~

"This is to certify that the above was not treated before June of 1964 for chest pain or symptoms of heart disease nor has he complained of similar pain during the years he attended the...Clinic since July of 1958".

The company representative established, and the claimant admitted, extensive off the job work involving long hours, mainly delivery of eggs to householders in the community of Elliot Lake and surrounding mine townsites and occasionally moving furniture with his truck. This took place over a period of 6 years previous to his disablement in June 1964. In addition he operated a farm with the help of his family and travelled back and forth weekends, a distance of 143 miles each way.



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A member of the Appeal Tribunal pointed out that the claim was allowed "for the acute episode" following a report on an examination by an "Independent Specialist" and further that "there was quite a good deal of head scratching before the claim was allowed at all....because there haven't been any real severe or extraordinary stress associates".

The company representative indicated "that the Board was most generous in its allowance of this Claim....up until November 1964 and that no further payment should be made after that date".

The Appeal Tribunal's decision reads in part as follows:

"On consideration of all the evidence including the transcript, the Appeal Tribunal is of the opinion that no causal connection has been shown between the claimant's employment on or about June 1964, and the disability which became manifested at that date.

The Appeal Tribunal is of the opinion that this is not an allowable claim under the terms of the Act and, therefore, must reject the claim. However, in consideration of all the circumstances, the Appeal Tribunal orders that no refund be demanded".

This decision was deemed fair by the Company but it was appealed by the claimant and a hearing was held in January 1966 before the Board. In spite of the workman's statement, supported by his attending physician, that there was no evidence of a pre-existing heart condition prior to his disability in June 1964, the Board's top officials, constituting the final stage of appeal, ruled that the claimant

"has a pre-existing heart condition which was aggravated....June, 1964 during the course of his employment".

^{then} and extended compensation benefits. This example illustrates the dilemma in which the Board's staff is placed in endeavouring to interpret Clause (iii). This type of decision, or reversal of an earlier decision introduces a number of undesirable aspects, namely it:

1. Does not comply with the Board's own interpretation of Clause (iii) as described by Mr. G. S. Black in the April 1966 issue of the Board's News Bulletin and quoted below, in that there was no sudden or unusual exertion.

"Entitlement, however, under this Amendment requires that the disablement which a workman suffers must have some causal relationship with the work being performed. It is not sufficient that the disablement comes on during work; rather, there must be something about the work which can be considered to have caused the disablement. The cause might be strenuous work, awkward position, unaccustomed strain or even a movement arising out of the work which is reasonable to consider may have caused the disablement".

2. Casts a reflection on the judgement of the Claims Department, the Review Committee, and the Appeal Tribunal.

3. Puts the attending physician in an untenable position in regard to doctor - patient relationship because he had not indicated the disability as occupational.

4. Undermines the accident prevention efforts of the employer and his staff and the majority of workmen who are sincerely endeavouring to prevent accidents. The occurrence of a compensable disability with no apparent reason destroys the motivation to work safely. How could a supervisor anticipate or prevent such a manifestation of disablement without knowledge of a pre-existing condition?

5. Discourages employers from providing suitable employment to workmen with inherent or pre-existing disabilities and seriously hampers rehabilitation of those injured on the job.

Employers, in cooperation with conscientious disabled workmen, have demonstrated their willingness to provide employment for them. This policy adds greatly to the productivity of the nation and should not be discouraged by imposing on employers an unjust share of the cost of disablement not caused on the job.

6. Increases the temptation for some workmen with inherent disabilities or disabilities suffered off the job to report them as having occurred at work. We submit:

1. That Clause (iii) has introduced too much of a tendency for decisions to be influenced by sympathy for a disabled workman rather than strictly by

a causal relationship with his actual exertion when the disability was experienced.

2. That Clause (iii) is unnecessary because causal relationship can be adequately established under Clauses (i) and (ii) of Section 1. (1) (a) and Section 3. - (2). ~~§/~~ (3) ~~§/~~

Therefore it is recommended:

1. That Clause (iii) be eliminated. ~~1. That Clause (iii) be eliminated.~~
2. That the cost of benefits for disabilities of workmen not "arising out of and in the course of employment" be covered by social legislation.

Such an arrangement probably would:

- 1.. Eliminate human tendency of adjudicators to stretch the benefit of doubt in favour of the injured workman into the realm of social security.
2. Reduce temptation of some workmen to seek compensation for inherent disabilities from Board funds.
3. Alleviate the workload of the Board's staff, particularly those serving on Tribunal Appeal and Board hearings because many appeal cases appear to be on the borderline between occupational and non-occupational disabilities.
4. Remove many of the frustrations experienced by management and supervisors in their efforts to prevent injuries and to rehabilitate and employ partially disabled workmen.
5. Alleviate the embarrassing situations which the attending physicians find themselves when they, in borderline cases, find a disability to be of non-occupational origin but the workmen believes it to be occupational. (5)

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Reporting an Accident - Section 21 - (1) & (5)

Prompt and accurate reporting of an injury or condition associated with a disability, is very essential to effective investigation of an accident, prevention of further injuries and proper adjudication of claims.

These objectives are seriously hampered if an accident is not reported before a workman leaves the employer's premises. Furthermore, permissiveness on the part of the Board towards late reporting facilitates the filing of claims for disabilities caused off the job.

Therefore it is recommended:

1. That the following clauses in Section 21. - (1) be more strictly enforced by the Board

"compensation...is not payable unless notice of accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured".

2. That subsection (5) be either eliminated or at least reworded so that it does not unduly negate the pertinent clauses in subsection (1) quoted above.

3. That statements made by the injured man, witnesses and all others concerned, immediately or within several days following an accident be given prime credence by the Board in all stages of adjudication. This should be in preference to verbal and often dramatized versions of conditions surrounding an accident made from memory at appeal hearings sometimes years later.

4. That a time limit of three months be set for accepting appeals from Board decisions and that appeals be granted only after new evidence is presented to the Board.

Waiting Period - Section 3. - (1) (a)

The change from 'working' days to 'calender' days has resulted in:

1. Discrimination against workmen injured early in the week because they do not have the benefit of regular days off to qualify for compensation.

2. Tendency for attending physicians to inadvertently stretch periods of disability over a week-end even if the workman was fit for work on a day when normally there is no work available. Consequently, many minor injuries occurring, say, on a Thursday have become compensable because the man could not return until Monday although disability lasted only one day.

We submit that days on which no work has been scheduled have no bearing on the purpose of the Workmen's Compensation Act and therefore should not be part of the waiting period.

It is recommended that the wording in Section 3. - (1) (a) be changed to read:

"does not disable the workman for a period of at least three working days".

We highly respect the abilities and integrity of the Board and members of its staff but believe that interpretation of the Act and especially fair adjudication of borderline claims is hampered by certain clauses which in effect, constitute social legislation.

Respectfully submitted,

Yours sincerely,



R. D. Lord,
Manager of Mines.

